IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 17740 of 1996

Between:

T.Mathu S/o. K.Tyagarajan
R/o.16/3 , Railway Quarters , South Lalaguda Secunderabad.

..... PETITIONER

AND

1 Tha A.P. State Road Transport Corporation Rep by its Managing Director
Mushirabad , Hyderabad-20.
2 Regional Manager APSRTC
Hyderabad City Region J.B.S., Picket
Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records from the 2nd respondent and issue a writ , order or direction , particularly one in the nature of writ of Mandamus , declaring that the order of the 2nd respondent in Proceedings Nos.d1/255(4)/96-HCR Dt:16-4-1996 , in not considering the case of the petitioner for promotion , as illegal , unjust , contrary to law , arbitrary , discriminatory and violative of Articles 14 , 16 and 21 of the Constitution of India; and grant all consequential benefits ; and pass such othjer order or orders.

Counsel for the Petitioner:MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondents: MR.K.HARINATH

The Court made the following :

ORAL ORDER:

The petitioner's claim for promotion as Depot Clerk in the Andhra Pradesh State Road Transport Corporation (for short 'the APSRTC') was rejected by the 2nd respondent by proceedings dated 16-04-1996. The rejection was on the ground that in view of the directions of the Labour Court dated 14-10-1993 in I.D.No.294 of 1989, the past service of the petitioner in the category of Assistant Depot Clerk (for short 'ADC') could not be reckoned for consideration of his promotion.

Very briefly stated the petitioner joined service of the APSRTC as a Driver in the year 1973 in the Ex-Servicemen quota and was promoted as ADC in the year 1979. Pursuant to a departmental inquiry on a plurality of charges of misappropriation and negligence in the performance of his duty, the petitioner was after a due process of inquiry, removed from service on 27-05-1985. After exhausting the appellate and revisional remedies, without any benefit there from, he instituted I.D.294 of 1989 before the jurisdictional Labour Court under Section 2-A (2) of the Industrial disputes Act, 1947 (for short 'the Act') assailing the departmental proceedings and the punishment of removal from service. By the award dated 14-10-1993, the Labour Court found that the charge of misappropriation was not established, on the evidence adduced during the inquiry, but however concurred with the findings of disciplinary and appellate authorities that the charge of negligence in the performance of duties was rightly held 'established'. Consequently, by the award dated 14-10-1993, the punishment of removal imposed on the petitioner was set aside and the petitioner was directed to be reinstated to duty with full backwages and continuity of service. After recording this relief, the Labour Court recorded this: '…*the punishment of removal from service as excessive and disproportionate, I direct the respondent to reinstate the petitioner into service with backwages and continuity of service. His past service shall, however, be protected from the date of joining till the date of removal for terminal benefits only.'*

Aggrieved by the award, both the APSRTC and the workman – the petitioner herein, filed writ petition Nos. 20756 of 1994 and 24063 of 1996. This court by the common order dated 05-08-2004 disposed of the writ petitions modifying the award of the Labour Court, confirming the award in part. This court while concurring with the

conclusions of the Labour Court that the charge of misappropriation was not established, confirmed the award to the extent the petitioner was directed to be reinstated into service with continuity of service for the period he was out of service on orders of removal till the date of his reinstatement.

With regard to the backwages, however, this court directed that the petitioner shall be entitled to only 75% of backwages and that 25% of the backwages could be withheld for the charge of negligence in the performance of his duties having been duly established. This court also found that there was incoherence in the operative portion of the award, as recorded by the Labour Court, on the aspect of grant of benefits and has clarified the benefits the petitioner would be entitled to as above.

In view of the order of this court dated 05-08-2004 in writ petition Nos. 20756 of 1994 and 24063 of 1996, the petitioner is entitled to all the service benefits, including consideration for promotion to the category of Depot Clerk, as though he suffered no diminution of seniority in the category of Assistant Depot Clerk even during the period of his removal from service till the date of his reinstatement. Therefore, the petitioner would be entitled for consideration for promotion to the higher category of Depot Clerk in his turn in accordance with his seniority in the category of Assistant Depot Clerk in the unit of appointment under the relevant service rules. The petitioner has also retired from service on superannuation on 31-10-2000. Therefore, his case for promotion would have to be notionally considered in accordance with his seniority in the category of Assistant Depot Clerk and he would be entitled only to the benefit of difference in salary as between the post of Assistant Depot Clerk and Depot Clerk from the date with effect from which he is notionally found eligible for promotion as Depot Clerk till 31-10-2000, the date of his retirement.

On the aforesaid analysis, the order of the 2nd respondent dated 16-04-1996 denying the petitioner the benefits of promotion to the post of Depot Clerk is set aside. The respondents are directed to expeditiously, in any case within a period of three months from the date of receipt of a copy of this order, consider the case of the petitioner for notional promotion as Depot Clerk treating the petitioner as having unbroken and continuous service in the category of Assistant Depot Clerk. On identification of the date with effect from which the petitioner would be entitled to notional promotion as Depot Clerk, the arrears of salary and emoluments being the difference between the component payable in the category of Depot Clerk and the

category of Assistant Depot Clerk shall be computed and paid to the petitioner. The entirety of this exercise shall be completed within a period of three months from the date of receipt of a copy of this order, as directed above. The writ petition is disposed as above, but in the circumstances, there shall be no order as to costs.

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GODA RAGHURAM, J

Dt. 05-08-2004

Pvks/DSR

To

1 The Managing Director, the A.P. State Road Transport Corporation
Mushirabad , Hyderabad-20.
2 Regional Manager APSRTC
Hyderabad City Region J.B.S., Picket
Secunderabad.

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